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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/497,071
Filing Date: February 02, 2000
Appellant(s): HOFFBERG-BORGHESANI ET AL.

Steven M. Hoffberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/26/2008 appealing from the Office action mailed 07/12/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct. Applicant note that no statutory basis for rejection under 35 USC § 102-103 is specified for claims 163-165 and 174-189. The Examiner notes that these claims are rejected under 35 USC § 102 (**see Final Rejection dated 7/21/2007**), but were absent from the listings of claims in the header. An updated header has been provided.

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Vogel (U.S. Patent No. 5253,066) published October 13, 1993 (PCT Publication dated December 13, 1990)

Young (U.S. Patent No. 4,706,121) published November 10, 1987 (filed May 6, 1986)

Campbell et al. (U.S. Patent No. 4,536,791) published August 20, 1985 (PCT Publication Date October 15, 1981)

Wachob (U.S. Patent No. 5,155,591) published October 13, 1992 (filed October 23, 1989)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 177 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 177 to state, "between data representing content characteristics a member of the set of available media programs and the data representing content", which has rendered the claim indefinite. The examiner cannot assume what Applicant has intended to claim, however, in the view of expediting the prosecution of the case, the examiner will assume that the Applicant meant to place a comma between "characteristics" and "a member", which is supported by Vogel, but also is not supported by the specification (see 112 1st Paragraph rejection below).

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 166-168, 177, 187 and 190-193 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner has reviewed the entire specification in regards to claims 166-168, 177, 187 and 190-193 including Column 65, Line 8 through Column 71, Line 50 and

Figure 24 of the specification, which the claimed invention is specifically drawn to and no support can be found for the claims.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 155-156 and 160-165 and 174-189 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Vogel (U.S. Patent No. 5,253,066).

Referring to claim 155, Vogel discloses storing data describing available media (see Column 3, Lines 49-55 for receiving periodic program schedule data which contains future and current program data and Column 3, Lines 67-68) and storing data representing previously selected media (see Column 3, Lines 59-66 for receiving real-time data that identifies programs currently being broadcast, wherein the real-time data includes different characteristics and further note that this data is transmitted after a channel change, therefore representing characteristic of media **previously selected by a user**).

Vogel also discloses automatically performing a search of said available media for a correspondence to data representing content characteristics of the previously selected media (see Column 5, Lines 13-20 for performing a search by the user initiating display of the program menu which displays the time of broadcast, title and censorship classification, all of which are part of the real time data (see Column 3, Lines 59-66), therefore initiation of the program menu clearly allows a user to perform a search of said available media for a correspondence to data representing said characteristics of media previously selected by the user), wherein said data representing content characteristics are not received as an input from a human user (again note, that the content characteristics are representative of the real-time data received after selection of the media (video program), therefore, since the real-time data (classification data) is not input by the user, clearly the content characteristics are not received as a input from a human user). **The examiner further notes that because the search is performed by the electronic system in the form of an electronic program guide, that the electronic system running the electronic program guide is processing the user input and performing functions of the electronic program guide automatically, therefore the search is being performed by the electronic system automatically, as opposed to a user manually selecting channels in sequential order.**

Vogel also discloses automatically issuing a notification of available media having characteristics corresponding to, but not identical to (see Figure 4 for not only displaying the previously selected media and available media (recorded programs)

corresponding to, but not identical to (different classifications, times and channels)) previously selected media (see again Column 5, Lines 13-20 and Figure 3 for notifying the user (by displaying the program menu) where the notification contains a classification for each program). **The examiner further notes that because the notification is performed by the electronic system in the form of an electronic program guide, that the electronic system running the electronic program guide is processing the user input and performing functions of the electronic program guide automatically, therefore the notification is being performed by the electronic system automatically.**

Vogel also discloses that said media comprises a media program (see Column 3, Lines 37-39 for the media comprising television programs).

Referring to claim 156, Vogel discloses that said media comprises television programs (see Figure 3 for the EPG containing television programs) and said data describing available media comprises a channel guide list (see Figure 3 for the EPG providing a channel guide list of television programs) comprising content characteristics (see again Figure 3 for the programs including channel, time and classification characteristics of the content presented).

Referring to claim 160, Vogel discloses that the data representing said characteristics of previously selected media comprises media theme information (see

Column 4, Lines 40-50 for classification data C, G, A and R, which is theme information).

Referring to claim 161, Vogel discloses displaying a list of available programs (see Figure 3), and receiving an input for recording a selected one of the available programs (see Column 5, Lines 24-26).

Referring to claim 162, Vogel discloses a controller component configured to control delivery of a media program (see remote control 112 in Figure 1).

Vogel also discloses a processor component (see microprocessor 104 in Figure 1) configured to automatically determine a correspondence between data representing content characteristics of media within a set of available media programs with data representing content characteristics of previously presented delivered media (see Figure 3 and Column 5, Lines 13-20 for displaying an electronic program guide with programs that only correspond to the selected classifications in Figure 4), wherein said data representing content characteristics are not received as input from a human user (see the rejection of claim 155 and further note that the classification codes are received with incoming real-time data are therefore not input by a human user), and producing a signal dependent on a degree of said correspondence (see Column 4, Lines 40-68 for providing a recording or alert based on the classification (degree) of the programs in the real-time and periodic program guide data received (further note Column 6, Lines 22-66 for a more detailed example of the recording process)). **The examiner further notes**

that because the electronic system processes and displays the electronic program guide information by the use of a microprocessor 104, that the electronic system is performing these functions automatically.

Referring to claim 163, Vogel discloses that said signal controls a recording of a media program (see again Column 4, Lines 4-68 for controlling the recording of a program based on the classification information).

Referring to claim 164, Vogel discloses that said signal produces a list of choices for a user through a human user interface (see Figure 4 for selecting specific classifications by the user and Figure 3 for displaying the classifications along with the corresponding user as a list of choices).

Referring to claim 165, Vogel discloses a user interaction with said system serves as an input to an adaptive algorithm of said processor for determining said correspondence (see Column 4, Lines 40-67 and Figure 4 for selecting specific classification settings and using these setting to determine the correspondence between periodic data and real-time data and perform a an event, such as alarming the user that program is available for viewing (further note Column 6, Lines 22-66)).

Referring to claim 174, Vogel discloses receiving media programming information as the data representing characteristics of media (see Column 3, Lines 59-66).

Referring to claim 175, Vogel discloses automatically generating data representing characteristics of media (see Column 3, Lines 37-45 and 59-66 for the headend generating/transmitting the data representing characteristics of media).

Referring to claim 176, Vogel discloses that the data representing characteristics comprises a description of media (see Column 3, Lines 59-62).

Referring to claim 177, see the rejection of claims 155, 162 and 168 and the 112 2nd rejection (see above).

Referring to claim 178, Vogel discloses that the identification of at least one member of the set of available media programs having characteristics corresponding to characteristics of previously selected media by that user is presented as a selectable object in a graphic user interface (see Figure 3).

Referring to claim 179, Vogel discloses storing data representing at least one content parameter relating prior selection by a respective user (see the rejection of claim 155 for real-time data (received after a program selection by a user) includes a content parameter in the form of a classification code), the at least one parameter not being input by the respective user (the examiner notes that the real-time data is received by the television receiver and not input by the respective user).

Vogel also discloses determining a set of available media programs (see Figure 3 for the system determining a set of programs to display on an electronic program guide), each member of the set having at least one associated content parameter (see Figure 3 for the programs in the program guide containing content parameters (classification codes)).

Vogel also discloses automatically determining a degree of correspondence of prior selections by the respective user and members of the set of available media programs (see Column 4, Lines 55-67 for determining if a prior program was selected for recording, viewing or alerting and performing a subsequent action if a determination is made (which clearly represents a degree of correspondence)) based on at least the content parameters relating to prior selections by the respective user and the associated content parameters of members of the set of available media programs (see again Column 4, Lines 55-67 and note that if a user sets an alert to view a future program, then at the time the viewer receives the alert, the system compares the currently broadcasted program content parameter to the previously selected program content parameters, therefore if a match is found an alert is issued to the user (the examiner further notes that the same applies to the record and viewing functions)).

Vogel also discloses outputting a reference to at least one member of the set of available media programs based on at least the automatically determined degree of correspondence (see again Column 4, Lines 55-67 for outputting a reference in the form of recording, viewing or alerting).

Referring to claims 180-181, see the rejection of claim 178.

Referring to claim 182, see the rejection of claim 179.

Referring to claim 183, see the rejection of claims 155, 162 and 179.

Referring to claims 184-185, see the rejection of claim 156.

Referring to claim 186, Vogel discloses that the plurality of characteristics of the available media are derived from an EPG (see Column 3, Lines 37-68).

Referring to claim 187, Vogel discloses that said output comprises a displayed list of hypertext entries representing available media, further comprising receiving a selection of one of the hypertext entries (see Column 5, Lines 51-59 for each of the program listings having an option to select the "?" key with allows the program listing to become a hypertext entry that references an additional page of information about the particular television program selected from the guide page of Figure 3).

Referring to claims 188-189, see the rejection of claims 160-161, respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 157-159 and 166 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel (U.S. Patent No. 5,253,066) in view of Young (U.S. Patent No. 4,706,121).

Referring to claim 157, Vogel discloses all of the limitations in claim 155, as well as that the notifying step includes the step of producing a display including a list of the available media (see Figures 3-4), and although Vogel teaches classification information corresponding to each program, Vogel is silent for the list meeting a predetermined correspondence criteria on a display screen for viewing by the user (i.e. does not teach using the classification information to organize the program guide).

Young also discloses classification information in the form of theme data (see Column 12, Line 45 through Column 13, Line 31) and that a program guide can be displayed that only corresponds to the themes selected (see Column 12, Lines 13-14).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the program guide listings of Vogel, using the theme mode, as taught by Young, so that programs of special interest are not missed through forgetfulness and eliminating most of the program listings that are of no value to the viewer (see Column 5, Lines 20-32 of Young).

Claim 158 corresponds to claim 157, where Young discloses altering the produced display in dependence on at least input received from a data entry device (see Figures 3-5 and Column 10, Lines 6-8).

Claim 159 corresponds to claim 158, where Vogel discloses the step of selecting one of the available media items displayed on the list of available media (see Column 5, Lines 24-26 for selecting a program for recording).

Referring to claim 166, Vogel discloses all of the limitations in claim 155, but fails to teach that at least one memory stores information regarding at least two humans, wherein said signal is dependent on a defined set of humans.

Young teaches that at least one memory stores information regarding at least two humans, wherein said signal is dependent on a defined set of humans (see Column 10, Line 65 through Column 11, Line 3 for assigning different setting for up to 4 users).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the program guide listings of Vogel, using the multiple user modes, as taught by Young, so that programs of special interest are not missed through forgetfulness and eliminating most of the program listings that are of no value to the viewer (see Column 5, Lines 20-32 of Young).

Claims 167 and 190-191 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel (U.S. Patent No. 5,253,066) in view of Campbell et al. (U.S. Patent No. 4,536,791).

Referring to claim 167, Vogel discloses all of the limitations in claim 162, but fails to teach that the presentation of media is restricted in dependence on a financial transaction.

Campbell discloses that a pay-per-view system for selecting media programs requires additional billing and upon approval by the user's key entry, which allows a user to be billed a pay per view program is allowed to select the program (see Column 17, Lines 53-64).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the program selection system, as taught by Vogel, using the pay per view approval system, as taught by Campbell, for the purpose of allowing the system operator to control subscription television services on a per channel, per service tier and per event basis (see Column 3, Lines 2-4 of Campbell).

Referring to claims 190-191, see the rejection of claim 167.

Claims 168-173 and 192-193 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel (U.S. Patent No. 5,253,066) in view of Wachob (U.S. Patent No. 5,155,591).

Referring to claim 168, Vogel discloses a user interface for receiving a selection of a media item (see Figure 3 and Column 5, Lines 13-38) and for delivering a response to the selection (see Column 5, Lines 24-29 for recording a program in response to the selection). **The examiner further notes that because the search is performed by**

the electronic system in the form of an electronic program guide, that the electronic system running the electronic program guide is processing the user input and performing functions of the electronic program guide automatically, therefore the search is being performed by the electronic system automatically, as opposed to a user manually selecting channels in sequential order.

Vogel also discloses a processor for automatically searching media items available for selection (see again Figure 3) and for presenting a recommendation of at least one available media item, based on a degree of correspondence of said selection and content characteristics of available media items input independently of a human user (see Column 4, Lines 40-68 for providing a recording or alert based on the classification (degree) of the programs in the real-time and periodic program guide data received (further note Column 6, Lines 22-66 for a more detailed example of the recording process)).

Vogel fails to disclose an accounting database for recording commercial transaction data relating to selections.

Wachob discloses an accounting database for recording commercial transaction data relating to selections made by the user (see Column 10, Lines 27-35).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television delivery system, as taught by Vogel, using the accounting database, as taught by Wachob, for the purpose of providing accurate commercial tracking and advertiser billing (see Column 10, Lines 27-28 of Wachob).

Claim 169 corresponds to claim 168, where Vogel discloses that said media items comprise television programs and said stored characteristics comprise a channel guide list (see the rejection of claim 156), and television program-descriptive text accompanies said channel guide list (see Column 5, Lines 51-57 for using the "?" key to provide a text description of a program in the channel guide list).

Claim 170 corresponds to claim 168, where Vogel discloses that said recommendation presented by said processor produces a display including a list of the available media meeting a predetermined correspondence criteria on a display screen for viewing by the user (see the rejection of claim 157).

Claim 171 corresponds to claim 168, where Vogel discloses that said characteristics comprise an identification of a program type (see Column 5, Lines 40-50 for the characteristics being a classification field which can represent one of many different program types).

Claim 172 corresponds to claim 168, where Vogel discloses that said processor controls a recording of said media item (see Column 4, Lines 55-65 and Column 6, Lines 22-66).

Claim 173 corresponds to claim 168, where Wachob discloses that said database stores a history of selections made by a plurality of users (see again Column 10, Lines 27-35).

Referring to claim 192, Vogel discloses all of the limitations in claim 183, but fails to teach delivering an advertisement to the user in dependence on characteristics of media previously selected by the user.

Wachob discloses delivering an advertisement to the user in dependence on characteristics of media previously selected by the user (see Figure 4 and Column 7, Line 13 through Column 8, Line 66).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television delivery system, as taught by Vogel, using the targeted commercial advertisement system, as taught by Wachob, for the purpose of more efficiently utilizing advertising budgets (see Column 1, Lines 29-30 of Wachob).

Claim 193 corresponds to claim 192, where Wachob further discloses accounting for delivery of an advertisement to the user (see Column 10, Lines 27-35).

(10) Response to Argument

FORMAL REJECTIONS

- i. **Claim 177 is rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite**

Applicant argues that the Examiner's interpretation of the claim in view of the typographical error negating the claim limitation "**of**" is not supported by the specification and that a claim may be considered valid under 35 U.S.C. § 112, even though it contains a typographical error, if a person of ordinary skill (and creativity) in the art would have understood its scope. The Examiner respectfully disagrees.

To reiterate, the Examiner's interpretation of the claim without the "**of**" limitation consisted of "automatically determining a degree of correspondence between data representing **CONTENT CHARACTERISTICS a MEMBER OF THE SET OF AVAILABLE MEDIA PROGRAMS and the DATA REPRESENTING CONTENT CHARACTERISTICS OF PREVIOUSLY SELECTED MEDIA**". Therefore, when an automatic determination of a degree of correspondence is performed, data including **content characteristics, a member of the set of available media programs and the data representing content characteristics of previously selected media** are considered.

Applicant provided a clarifying amendment to the claims, however, the amendment was made **after** the Final Rejection dated 7/12/2007, thereby changing the scope of the claim and requiring further consideration by the Examiner, therefore the

amendment was not entered and the Examiner's rejection stands.

- ii. **Claims 166-168, 177, 187, and 190-193 are rejected under 35 U.S.C. § 112, as allegedly failing to comply with the written description requirement.**

Claim 166

Applicant argues that claim 166 is supported by the specification filed 02/02/2000 at Page 117, Lines 9-15, Page 138, Line 15 through Page 139, Line 2 and Example 27 on Page 203.

Applicant further notes that these cited portions state that, "**If multiple users use the device, then the device identifies the relevant users**" and "**In the case of a single user or group of users, the interface could maintain a history of feature usage for each user, as in the past history block 2107, and provide a lower user interface level for those features which are rarely used, and therefore less familiar to the user, through the current user level output 2101**" and "**It should be noted that the present system preferably detects an identity of a user, and therefore differentiates between different users by an explicit or implicit identification system. Therefore, the system may accumulate information regarding users without confusion or intermingling**".

The Examiner notes that none of these cited passages in Applicant's

specification support claim 166 as written. Claim 166 is dependent from 162, which states that "**a processor component configured to automatically determine a correspondence between data representing content characteristics of media within a set of available media programs with data representing content characteristics of previously delivered media**".

While the cited passages above disclose recording a user's history of accessing features in a single user interface, the cited passages fail to teach **data representing content characteristics of media within a set of available media programs**. The cited passages further only teach the use of the user's access history and fail to state any type of automatic determination of **a correspondence between data representing content characteristics of media within a set of available media programs with data representing content characteristics of previously delivered media**.

Further, claim 162 further states, "**wherein said data representing content characteristics are not received as input from a human user**". The cited passages clearly state that a user's past feature usage of the user interface (**which is accessed/input by the user**) is used to determine a redacted user interface. Therefore, the cited passages clearly teach that said data representing content characteristics **are received** as input from a human user.

Further, claim 162 states, "**producing a signal dependent on a degree of said correspondence**", while claim 166 states, "**wherein said signal is dependent on a defined set of humans**". The cited passages only teach that a single user's access history of features is used to present the user a redacted user interface, therefore the

cited passages fail to teach that the signal is dependent on a defined set of humans.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 167

Applicant argues that claim 167 is supported by the specification filed 02/02/2000 in Example 31 on Page 213.

Applicant further notes that these cited portions state that, "**The payment or micropayment scheme may be integrated with a content management/digital watermarking/copy protection scheme, for example where the transaction purchases a limited license in an electronic audio-visual work. The system typically automatically triggers a monetary transaction to compensate the proprietary rights holder, although under certain circumstances the delivery of the work and the compensation for viewing may be decoupled**" and "**Alternately, the privileged store is encrypted, and the decryption key is provide only upon payment**" and "**The types of content delivered may include images, video, multimedia clips, music, text content, templates, software and applets, and any other sort of information**".

The Examiner notes that none of these cited passages in Applicant's specification support claim 167 as written. Claim 167 is dependent from 162, which states that "**a processor component configured to automatically determine a correspondence between data representing content characteristics of media within a set of available media programs with data representing content characteristics of previously delivered media**".

The cited passages above fail to teach how presentation of media being restricted based on a financial transaction is performed in conjunction with the claim limitations of claim 162. For example, the cited passages (**and Example 31 of Applicant's specification**) fail to teach determining "**a correspondence between data representing content characteristics of media within a set of available media programs with data representing content characteristics of previously delivered media**", as written in claim 162, in conjunction with encrypting the media presentation based on a financial transaction, as written in dependent claim 167. Example 31 of Applicant's specification simply provides a process for purchasing a pay-per-view television program that is encrypted until payment is received, and is deficient in teaching any type of correspondence determination, as recited in claim 162.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 168

Applicant argues that claim 168 is supported by the specification filed 02/02/2000 at Pages 73, Lines 6-17, Pages 75-81, Page 87, Lines 6-24, Page 103, Lines 11-15, Page 146, Lines 26 through Page 147, Line 7, Example 31 and Page 214, Lines 9-18.

Applicant further notes that these cited portions state that, "The present invention also provides a mechanism for copyright holders or other proprietary interests to be protected, by limiting access to information by encryption or selective encryption, and providing an accounting system for determining and tracking license or broadcast fees" and "As stated above, the content may be copy protected by the use of encryption and/or lockout mechanisms" and "Because of the encryption, lack of portability and continued royalty accounting, content provider acceptance will also likely be high" and "the enforcement of proprietary replay system may be accepted" and "In this case, a recording system is provided which retains the encryption characteristics, ensuring the integrity of the accounting process" and "an encrypted media may be mass distributed, which requires authorization for display", as well as various other cited portions.

While the cited portions teach an accounting system related to media programs, the cited portions fail to teach "an accounting database for recording commercial transaction data relating to selections received", wherein the selections received are presented based on a "recommendation of at least one available media item, based

on a degree of correspondence of said selection and content characteristics of available media items input independently of a human user", as recited in claim

168.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 177

Applicant argues that claim 177 is supported by the specification filed 02/02/2000 at Figure 21 (**element 2107**), Figure 24 (**element 2406**), Figure 26 (**elements 2607 and 2608**), Figure 31, Page 69, Lines 15-23, Page 86, Lines 1-10, Page 71, Line 25 through Page 72, Line 5, Page 92, Lines 3-9, Page 93, Lines 10-26, Page 102, Lines 19-26, Page 107 Line 7 through Page 108, Line 2.

Applicant further notes that the basis for the rejection is not fully understood, since claim 177 corresponds largely to other independent claims which were not rejected.

The Examiner notes that basis for the rejection stems from the 112 2nd Paragraph rejection and the non-entered "**of**" limitation discussed above. As stated above, the Examiner's interpretation of the claim without the "**of**" limitation consisted of

"automatically determining a degree of correspondence between data representing **CONTENT CHARACTERISTICS a MEMBER OF THE SET OF AVAILABLE MEDIA PROGRAMS and the DATA REPRESENTING CONTENT CHARACTERISTICS OF PREVIOUSLY SELECTED MEDIA**". Therefore, when an automatic determination of a degree of correspondence is performed, data including **content characteristics, a member of the set of available media programs** and **the data representing content characteristics of previously selected media** are considered. No support the processing of these three pieces of data is found in the specification in any of the cited portions noted by Applicant above.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 187

Applicant argues that claim 187 is supported by the specification filed 02/02/2000 at Page 63, Lines 6-26, Page 88, Lines 9-12, Page 127, Line 27 through Page 128, Line 5, Page 44.

While these cited portions teach the use of a web browser, the cited portions fail

to teach displaying hypertext entries in **said output**, recited in dependent claim 187, wherein **said output** is defined in independent claim 183 to be dependent on the automatically determined relation, wherein the automatically determined relation is determined between the available media and the media previously selected, as recited in independent claim 183.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 190

In response to the 112 1st Paragraph rejection of claim 190, see the Examiner's rebuttal of claim 167 above.

Claim 191

Applicant argues that claim 187 is supported by the specification filed 02/02/2000 at Page 44, Line 33 through Page 47, Line 13, Page 74, Line 20 through Page 75, Line 25, Page 83, Line 29 through Page 84, Line 28, Page 85, Lines 4-13, Page 86, Lines 1-25 and Page 87, Lines 16-24.

While these cited portions teach the determination of advertisements based on user inputs, the cited portions fail to teach that the step of determining advertisements to deliver, recited in dependent claim 191, is performed in conjunction with the steps recited in independent claim 183.

The Examiner further notes that multiple locations of the specification containing different embodiments/inventions are referenced in order to support the claim limitations and that no evidence has been provided (**nor stated in Applicant's specification**) that the different embodiments/inventions can be integrated together to result at the claimed invention.

Claim 192

In response to the 112 1st Paragraph rejection of claim 191, see the Examiner's rebuttal of claim 167 above.

ART REJECTIONS

iii. **Claims 155-156 and 160-165 and 174-189 are rejected under 35 U.S.C. § 102(e) as being anticipated by Vogel, US 5,253,066**

Claims 155-156, 161, 174

Applicant argues that Vogel fails to teach or suggest that after the channel is changed, the prior selection is retained, and thus Vogel does not teach, "storing data representing previously selected media".

The examiner disagrees and notes that Vogel clearly states that the real-time data is stored after a channel change (**see Column 3, Lines 62-66 for real-time data being received every 10 seconds AFTER a channel change**), therefore Vogel teaches storing data (**real-time data**) representing previously selected media (**because the real-time data is received after a channel change, the real-time is representative of previously selected media**).

Furthermore, the examiner notes that the claim limitations are so broad that Vogel clearly provides additional sets of data that is stored and representative of previously selected media (**see Column 5, Lines 26-29 for storing a list of programs previously selected for recording**). The examiner further notes that no distinction in the claims that the program must be broadcast before or after selection.

Applicant also argues that Vogel performs no search and that the channel identifier of the selected channel is used as an index to reference a single listing in the EPG, and no search of the contents of the EPG is performed.

The examiner disagrees and notes that the claim limitations are broad and that the claim limitations state, "automatically performing a search of said available media for a correspondence to data **representing content characterizes of the previously selected media**". The examiner notes that accordingly to the claims, a search merely

requires the searching of available media to additional data, where the data is representative of content characteristics of the previously selected media. Therefore, since a user can press a key and activate an EPG, the system internally must search for currently schedule program data and data representative of previously selected programs from among the entire database of EPG information (**which spans multiple days**) stored by the system (**see Figure 4 and Column 3, Lines 50-55**). Further note that since the data is being interpreted as the real-time data, Vogel clearly teaches that real-time data represents content characteristics of the previously selected media (**see Column 3, Lines 59-66**).

Further, Vogel clearly teaches that when an EPG is selected the system displays EPG information for both current programs and programs that are selected for recording (**see Column 5, Lines 13-20 and further note Column 5, Lines 26-29 for displaying an asterisk next to programs that have been previously selected for recording, therefore upon initiation of an EPG by the user, the system clearly processes the EPG data and the previously selected media data and determines a correspondence to data representing content characteristics (time, rating, day, channel and title) of the previously selected media (further note Figure 4 for displaying different content characteristics for both current and recorded programs, which would be the result of searching the available media for a correspondence to data representing content characteristics of the previously selected media)**).

Also as noted above, in the case of the alternative interpretation based on the broad claim limitations, Vogel also discusses at Column 6, Lines 54-61 where a comparison is performed when a current program identification signal is compared to a list of programs selected from the EPG for recording. Therefore, since the available media can be interpreted as the selected program and the data can be interpreted as one of the program in the list of recorded program, clearly a search is being performed of said available media for a correspondence to a program previously selected for recording **(in order to determine if the currently selected program should be recorded or not)**, where the previously selected program is representative of content characteristics.

Applicant further argues that Vogel does not teach or suggest that any notification is issued for available media having characteristics in any way corresponding to the previously selected media. The examiner disagrees and notes that Vogel clearly discloses that when a button on the remote control is pressed the electronic system of Vogel automatically processes the request and notifies the user of available media **(current column of Figure 4)**. The examiner further notes that the programs listed in the available media column of Figure 4 has characteristics corresponding to **(time, channel, rating)**, but not identical to previously selected media **(again note Figure 4 for the record column having characteristics such as time and channel that correspond to the characteristics in the current column, but are not identical to)**.

Applicant further argues that the term “characteristics” is pluralized, thus since Vogel only matches a single identifier of the currently selected channel to determine the correct EPG listing, only a single characteristic is matched. Again, the claim limitations are broad and only states that a search is automatically performed of said available media for a correspondence to “**data**”, where the “**data**” is representative of content characteristics of the previously selected media. Therefore, since a single channel identifier (**the available media**), which identifies the currently selected program, is compared to a list of previously selected program for recording (**see rejection**), a single program from the list of previously selected programs for recording represents the “**data**” which further represents content characteristics of the previously selected media, because the program itself (the “**data**”) has a time, channel and rating (**see Figure 4**), which represent multiple characteristics.

Applicant further argues that the claim specifically requires that the automatically issued notification exclude identical “previously selected media”. The examiner disagrees and notes that the claim requires issuing a notification of available media having characteristics corresponding to, but not identical to previously selected media, therefore, as disclosed in Figures 3 and 4 contains both the programs selected for recording and programs that have not been selected for recording, thereby teaching issuing a notification (**displaying the EPG**) of available media (**programs displayed in the EPG of Figures 3 and 4**) having characteristics (**time, channel and rating**)

corresponding to, but not identical to previously selected media (**see Figures 3 and 4 for various types of media being displayed that have a time, channel and rating not identical to the recorded programs/previously selected media**). Although the notification (**EPG**) includes available media corresponding and not corresponding to, previously selected media, the claims do not require that all media corresponding to previously selected media be excluded.

Claim 160

Applicant argues that Vogel does not teach a "theme". The examiner disagrees and notes that the classification data includes a theme such as "General Viewing" (**see Column 4, Lines 40-51**), which is clearly a unifying idea that is a recurrent element in a literary or artistic work. Further note that the characteristics further corresponding to the channel to program titles, which include "News", "Comedy" and "Weather", which can further be considered a theme.

Claims 162 and 163

In regards to claims 162-163, Applicant argues that Vogel does not teach a degree of correspondence. The examiner disagrees and notes that Vogel's classification characteristic clearly represents a degree of correspondence (**see the**

third definition provided by applicant, where the Adult “A” classification clearly represents the seriousness of adult content in a movie).

Claim 164

Referring to claim 164, Applicant argues that Vogel does not teach a user interface list dependent on “a signal dependent on a degree of said correspondence”. The examiner disagrees and notes that Vogel's classification characteristic clearly represents a degree of correspondence (**see the third definition provided by applicant, where the Adult “A” classification clearly represents the seriousness of adult content in a movie).**

Claim 165

Regarding claim 165, Applicant argues that Vogel does not teach an adaptive algorithm. The examiner disagrees and notes that when different classifications are selected in Figure 4 a different set of programs will be displayed, therefore the algorithm used to determine what programs to display in the user interface is adaptive based on the classifications required for display in the user interface of Vogel.

Claim 175

Referring to claim 175, Applicant argues that Vogel does not teach automatically generating data representing characteristics of media. As cited by the examiner, data transmitted from a cable headend generates the data to be transmitted to the system of Vogel (**see again Column 3, Lines 37-45 and 59-66**). Further note that the claims are broad and generation could be from the point Vogel, extracts and decodes the EPG information from the television signal, stores the information in RAM or when the data is retrieved from RAM and displayed to the user. Again, the Applicant presents multiple definitions from the Internet, however the Applicant has not argued the term "generating" in view of Applicant's own specification.

Claim 176

Referring to claim 176, Applicant argues that Vogel does not teach that the data representing characteristics comprises a description of media content. The examiner disagrees and notes that the classification field clearly indicates description of the media content, because a classification can be used to describe whether or not a program is suitable for viewing by a child (**see Column 3, Lines 54-55**).

Claim 177

Applicant argues that Vogel fails to teach "content characteristics" instead of "characteristics" as recited in the previous claims. The Examiner notes that Vogel clearly teaches a characteristic being a title, channel or time (**see Examiner's rebuttal of claims 155-156, 161 and 174 above**), which clearly is a characteristic of a television program/content.

In regards to Applicant's arguments regarding the degree of correspondence, see the Examiner's rebuttal regarding claims 162-163, stated above.

Claim 178

In regards to Applicant's arguments regarding claim 178, see the Examiner's rebuttal regarding claim 177, stated above, for teaching "content characteristics".

Claims 179, 180 and 181

In regards to claims 179-181, Applicant argues that similar distinctions are drawn to the Applicant's arguments regarding claim 177, however, from the Applicant's remarks it is not clear how the claim terminology of claim 179 relates to the claim terminology of claim 177. Claims 177 and 179 recite content characteristics and content parameters instead of simply characteristics. The examiner notes that the terms content characteristics and content parameters do not distinguish over the Vogel prior art of record. Vogel teaches a title of a program (**see Figures 3-4**), where clearly,

a title is a characteristic of content (**the program**). Further note that the time, channel and classification characteristics also represent content characteristics and content parameters (**as described in the rejection of claim 179**).

In regards to Applicant's arguments regarding the degree of correspondence, see the Examiner's rebuttal regarding claims 162-163, stated above.

Claim 182

In regards to claim 182, Applicant argues that Vogel fails to teach "content-dependent characteristics". As stated in the Examiner's rebuttal of claims 179-181, Vogel teaches a title of a program (**see Figures 3-4**), where a title represents a characteristic that is dependent upon the content (**the video program, where the video program contains a title representing the name of the video program**).

In regards to Applicant's arguments regarding the degree of correspondence, see the Examiner's rebuttal regarding claims 162-163, stated above.

Claims 183, 184-186, 189 and 193

Regarding claims 183-186, 189 and 193, see the Examiner's rebuttal of claims 155-156, 161 and 174 for Vogel teaching a plurality of characteristics and the Examiner's rebuttal of claim 177 for Vogel teaching "content characteristics".

Claim 187

In regards to claim 187, Applicant argues that the graphic of Vogel that links a viewer to more descriptive information about a video program, is not a hypertext entry. Applicant has used Wikipedia to cite various terms and uses of hypertext entries. Again the examiner notes that Wikipedia is not a recognized source of information by the Patent Office. A Wiki is a source for users to enter information about a particular subject, even if the information is not factually correct. Applicant is further reminded that any definition pulled Wikipedia is an up-to-date definition, while Applicant's specification dates back to 1991. Wikipedia's up-to-date definition could have meant something completely different 16 years ago. Hypertext is simply a link to additional information, which is clearly disclosed by Vogel.

Applicant has additionally provided a definition that provides support for the teaching of Vogel, where Hypertext is defined as, "text on a computer that will lead the user to other, related information on demand". Again, Vogel at Column 5, Lines 51-59 teaches that each of the program listings having an option to select the "?" key which allows the program listings to become a hypertext entry that references an additional page of information about the television program/movie.

Claim 188

Regarding claim 188, see the Examiner's` rebuttal of claim 160 above.

iv. Claims 157-159 and 166 are rejected under 35 U.S.C. § 103 as being obvious over Vogel in view of Young (US 4,706,121)

Referring to claims 157-158, Applicant argues that the combination of Vogel and Young do not disclose the claimed limitations.

Applicant states that one might suppose that if Vogel received an EPG such as that according to Young, and provided software for filtering the listing for selected themes, then this represents the architecture proposed by the Examiner. The examiner does not understand the Applicant's argument. If the combination of Vogel and Young provides the architecture proposed by the Examiner, then clearly the claim limitations are met. After reviewing the remaining arguments regarding claim 157, the examiner believe the Applicant is misrepresenting the combination of Vogel and Young.

Although Vogel clearly teaches an EPG that allows a user to enter classifications, Vogel does not specifically state that the EPG is organized according to the selected classifications. For example, Figure 4 displays the EPG with the R rating deselected, but clearly Rambo, which has an R rating is being displayed. Therefore, Vogel would benefit from Young (**as well as meet the claim limitations of claim 157**) by adding proper a proper filtering technique, so that the EPG would only display classifications enabled by the viewer.

Furthermore, Applicant further states that because Vogel fails to teach characteristics corresponding to, but not identical to previously selected media, as well

as Young not curing this deficiency, the claim limitations are not met. See the examiner's rebuttal above regarding claims 155-156, 161, 174 for Vogel teaching these claim limitations.

Referring to claims 159, see the Examiner's rebuttal regarding claims 157-158 and note that Applicant provides no argument's regarding claim 159.

Referring to claim 166, see the Examiner's rebuttal of claims 157-158 and 162 (above). Further note Column 10, Line 65 through Column 11, Line 3 for assigning different settings for up to 4 users.

v. Claims 167 and 190-191 are rejected under 35 U.S.C. § 103 as being obvious over Vogel in view of Campbell et al. (US 4,536,791)

In regards to claims 167 and 190-191, Applicant provides not arguments on how Campbell does not provide a financial transaction, which is absent from Vogel. Therefore, the rejections stand. Campbell clearly discloses providing a financial transaction used in a pay-per-view system and adding this functionally would clearly benefit Vogel (**as stated in the previous Office Action**).

vii. Claims 168-173 and 192-193 are rejected under 35 U.S.C. § 103 as being obvious over Vogel in view of Wachob (US 5,155,591)

Referring to claim 168, Applicant argues that Vogel fails to teach a recommendation. The examiner disagrees and notes that at Column 4, Lines 55-67 Vogel teaches various ways to providing a recommendation to the viewer.

Applicant further provides various definitions of a recommendation, however, as stated above, a definition from only Applicant's own specification or prior to when the invention is made will be considered for patentability of the claims. Even if the examiner were to consider the definitions provided by Applicant, clearly the first definition (**and others**) teach a recommendation provided by Vogel.

Referring to claims 169-170 and 171-172, see the examiner's rebuttal above.

Referring to claim 173, Applicant argues that Wachob does not store users' selections. The examiner disagrees and again notes Column 10, Lines 27-35 which clearly states that channel/commercial selections are recorded and sent back to the headend/advertisers.

Referring to claim 192, see the examiner's rebuttal in regards to claim 173.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2421

January 25, 2009

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